IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7285 OF 2005

Firoz Badruddin Khan .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.A.P.Mundergi, Senior Advocate with Sherali Khan for applicant

Mr.K.V.Saste, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 22nd November 2005.

P.C.

. Complaint was lodged in missing persons register bearing No.126 of 2005 by the

complainant Usha Gharat who complained that her husband was missing from 8th September 2005. It is her grievance that accused No.1 along with his associates called her husband and directed him to pay an amount of Rs.2,80,000/-. Initially C.R.No.585 of 2005 was registered under section 343, 365 read with 34 I.P.C. at Oshiwara police station. It appears that the accused Nos. 1 and 2 upon interrogation admitted to the offence. Subsequently, section 302, 346, 201 of I.P.C. and sections 3, 25 and 27 of Arms Act were added. Original accused Nos. 3 and 4 were also arrested and recoveries were effected at the instance of accused No.1.

2. Applicant original accused No.5 came to be arrested on 17th September 2005 and the main allegation against him is that he supplied firearm/ gun which was used by the accused while committing murder. The investigation is in progress. Application for bail made by the

applicant has been rejected on the ground that investigation is in progress.

3. Investigation papers have been produced for my perusal. It is true that the charge initially made was altered into more serious one as the accused Nos. 1 and 2 accepted that upon kidnapping along with other accused, crime was committed. Allegation is that accused Nos. 1 to 4 tied hands of the deceased with rope and beat him with iron rod and by firing from firearm/ pistol. Allegations against them are extremely serious inasmuch as face of the deceased was allegedly burnt by petrol and the body was wrapped in a bedsheet and plastic and thrown thereafter in Versova backwaters. Recovery has been effected and not only weapon but the rope has also been recovered.

4. Investigation papers till date reveal that as far as the present applicant is

concerned, he is working with B.E.S.T. at Colaba office and residing in BEST Quarters at Santacruz. The only role attributed to him in the entire episode is that firearm was supplied by him to the accused Nos. 1 and 2. Beyond that it is not disputed that he has not participated in the crime nor was he present at the place of offence. Nothing has been recovered from him. He is presently in police custody.

5. Mr.Mundergi, learned Senior Counsel appearing in support submits that the applicant is permanent resident of Mumbai. He has no criminal antecedents. The abovementioned role being attributed, does not mean that the applicant can be charged with offences punishable under section 302 or for that matter lesser offence of kidnapping as well.

6. Mr.Saste, A.P.P. in all fairness hands over to me the statements of persons recorded

till date. With his assistance, I have perused the statement of one co-employee of the applicant, Ravindra Verma. he has very clearly stated in his statement that being employee of the same undertaking, he knows the applicant accused. The applicant along with Mohammed Aslam Batt, Mohd.Rais and Aslam Shaikh as well as said Ravindra Verma were chatting together near the place of residence of Applicant and that time the applicant pointed out to them that he has with him box containing revolver as well as cartridges. He requested that the friends should assist him in storing the said weapon being as otherwise there would be problems from Police.

7. Assuming that the said statement and other materials can be used prima facie, it appears that beyond supplying this firearm which may have been possessed in violation of the provisions of Arms Act, the applicant has not played any role. The learned Sessions Judge has

recorded in para 5 of his order that the witnesses have stated that some weapon was supplied by the present applicant - accused No.1 in the year 1997. Statement of Ravindra Verma (abovementioned statement) and that of Mohammed Rais and Anwar Shaikh dated 17th September 2005 has been referred to also by the sessions judge. It is clear that they disclose that country made revolver and one Pistol was supplied by the applicant. The same is already seized.

8. In the light of the aforesaid, applying tests laid down by the Supreme Court in a recent decision reported in 2005 (8) S.C.C. 21, the applicant is entitled to be enlarged on bail, more particularly because, he is a permanent resident of Mumbai and working with B.E.S.T. He is residing in staff quarters in Mumbai. He has no criminal antecedents and is agreeable to abide by all the conditions including reporting at the local police station till the charge sheet is

filed. Hence, following order:-

i) The applicant shall be enlarged on bail in connection with C.R.No.585 of 2005 registered with Oshiwara Police Station in the sum of Rs.25,000/- with one or two sureties in the like amount.

ii) Bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

iii) Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) Application is disposed of in above terms.

vi) Parties to act upon an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)